September 9, 2005

EX PARTE

Via Hand Delivery

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control, WC Docket No. 05-75

Dear Ms. Dortch:

The latest ex parte presentation[1] submitted by Professor Wilkie and his clients largely echoes the same basic claims made in their prior filings in this proceeding. As MCI and Verizon previously demonstrated, those claims are misplaced and must be rejected.

Like his prior submissions that we have addressed previously,[2] Professor Wilkie's latest presentation makes two basic arguments. First, he argues that the combination of MCI and Verizon will eliminate a unique source of facilities-based competition for high-capacity special access services, and, as a result, lead to higher prices for these services. But the reality is that the limited areas in which MCI and Verizon have overlapping facilities are areas of concentrated demand that have been targeted by multiple competing providers. And while MCI provides fiber directly to a limited number of buildings in Verizon's service area, the overwhelming majority of those buildings either already have fiber from one or more other providers or are in areas where the economics are favorable to competitive supply. Second, Professor Wilkie claims that MCI is uniquely positioned to act as a wholesale supplier by purchasing and reselling special access from Verizon. The facts of the matter, however, are that MCI's resale of special access purchased from

[1] Professor Simon J. Wilkie, *Further Analysis of the Competitive Effects of the Proposed Mergers of SBC/AT&T and VZ/MCI*, WC Docket Nos. 05-65 & 05-75 (FCC filed July 29, 2005).

[2] *See* Verizon and MCI, Response to Analysis of The Alliance for Competition in Telecommunications (ACTel) (June 2005), *attached to* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket No. 05-75 (FCC filed June 30, 2005) ("*Verizon/MCI 6/30/05 Ex Parte*"); Special Access White Paper, *attached to* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket No. 05-75 (FCC filed Aug. 25, 2005) ("Special Access White Paper").

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Verizon or other incumbents is narrowly limited, and that MCI also has no unique ability to resell special access purchased from Verizon because the discounts available to MCI also are available to others.

A. The Limited Areas With Overlapping Facilities Have Been Targeted By Numerous Competing Providers.

1. As the applicants previously demonstrated, the limited geographic areas in which MCI has deployed competing fiber facilities are the same central business districts and other areas of concentrated business demand that have been targeted by numerous other competing fiber providers. There are, for example, more than 90 different fiber suppliers in the 39 groupings of contiguous wire-center areas in Verizon's region in which MCI has deployed local fiber (which are located in only 30 MSAs).[3] In fact, there are two or more competing providers other than MCI in 92 percent of these areas, and at least one other supplier in all but one.[4] And even at the individual wire center level, there is an average of six competing providers in addition to MCI.[5]

Given these facts, neither Professor Wilkie nor any other party seriously argues that this transaction would eliminate the presence of competing transport facilities in the overlap areas. Nor could they reasonably do so. As we have demonstrated, other competing providers have deployed fiber rings in the same areas as MCI, and MCI's transport facilities are accordingly not unique in any respect. Indeed, competing carriers have obtained fiber-based collocation in more than 80 percent of the same Verizon central offices in which MCI has obtained collocation.[6] The maps that we have previously submitted of the 30 MSAs in which MCI has overlapping fiber also demonstrate graphically that competing providers have deployed their own fiber rings in

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[3] *See* Lew/Lataille Decl. ¶ 22; Powell/Owens Decl. ¶ 18; Public Interest Statement at 32; Verizon/MCI Reply Comments at 29.

[4] Public Interest Statement at 32; Lew/Lataille Decl. ¶ 22; Reply Comments at 29. That one area is in Carbondale, Illinois, where MCI's local fiber network overlaps with only a single Verizon wire center. *See* Lew/Lataille Decl. ¶ 22.

[5] Lew/Lataille Decl. ¶ 23.

[6] *See* Attachment 1. Based on data for the subset of central offices in which Verizon previously performed physical inspections, there is at least one additional carrier with fiber-based collocation in approximately 82 percent of the same wire centers as MCI. Based on Verizon's billing and engineering records, which include offices that have not been physically inspected, there is at least one additional carrier with fiber-based collocation in approximately 94 percent of the same wire centers as MCI. Both calculations are based on the list of MCI's fiber-based collocations as of August 2005. *See also* Ex Parte Letter from Dee May, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-75 (FCC filed Aug. 5, 2005) (providing Verizon collocation data); Lew Reply Decl. ¶ 7 & Exh. 2.

the same areas where MCI provides service over its own facilities.[7] And, of course, these maps reflect only those fiber routes that are known from publicly available information, not the additional routes that Professor Wilkie and his clients (as well as other competing providers) have declined to disclose.[8]

Professor Wilkie instead argues that MCI is a unique source of facilities-based competition to individual buildings, focusing on the so-called "lateral" fiber connections that MCI has deployed from its metropolitan fiber rings to individual office buildings, rather than the rings themselves. But his arguments on this score are misplaced. As we previously demonstrated, the overwhelming majority of the buildings where MCI has fiber are either already served by a competitive fiber supplier, or readily could be because they are in close proximity to an existing CLEC fiber ring, or are in locations where the Commission has concluded other providers can deploy fiber.[9] Indeed, we previously showed that nearly half of the buildings where MCI has fiber are already served by one or more other known competing fiber provider; that approximately 80 percent of those buildings are in areas where the Commission has found that competing providers are capable of deploying their own fiber; and that approximately two thirds of those buildings are within one-tenth of a mile (about 500 feet) of an existing competitive fiber ring while approximately 86 percent are within one-half mile of an existing ring.[10]

The accompanying materials reflect a slightly updated version of this analysis. This analysis, like the prior one, is based on the limited information that is available to the applicants, and is based on lists generated by a subset of competing carriers of buildings in which those carriers disclosed they have fiber.[11] As with the prior analysis,

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[7] *See* Ex Parte Letter from Dee May, Verizon, and Curtis Groves, MCI, to Marlene Dortch, FCC, WC Docket No. 05-75 (FCC filed Sept. 7, 2005).

[8] *See* Letter from Sherry Ingram, Verizon, and Alan Buzacott, MCI, to Brad Mutschhelknaus, Kelley Drye & Warren (June 29, 2005) (requesting information from Eschelon Telecom, NuVox Communications, TDS Metrocomm, XO Communications, and Xspedius Communications); Letter from Brad Mutschhelknaus, Kelley Drye & Warren, to Sherry Ingram, Verizon (July 7, 2005) (rejecting request). These letters are reproduced at Attachment 5.

[9] *See* Verizon/MCI Reply Comments at 33; Powell et al. Reply Decl. ¶¶ 27-28, 31; Special Access White Paper at 28-44.

[10] Powell et al. Reply Decl. ¶¶ 19, 31; Special Access White Paper at 36-37.

[11] The previous analysis reflected buildings with known competitive fiber based on information that MCI had obtained from a subset of CLECs. *See* Powell et al. Reply Decl. ¶¶ 18-20. The update also reflects limited additional information that Verizon obtained in connection with its efforts to obtain fiber to compete for business customers out of its franchise territory as well as information that AT&T and SBC obtained from CLECs and filed in their ongoing merger proceeding. It also reflects AT&T's own list of buildings where it has fiber, which AT&T filed in that proceeding.

however, Verizon's and MCI's data are incomplete and likely understate, perhaps significantly, the extent of competitive fiber. This updated analysis still does not include data for many carriers that are known to operate fiber in Verizon's region. For example, the data do not include fiber for Cox, Qwest, or Comcast, which other sources indicate all have fiber within Verizon's region.[12]

The limited data that are available to the applicants nonetheless do show that, even at the building level, competing carriers have deployed fiber in many of the same locations as MCI. *See* Carlton et al. Presentation at 4. Of the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings with MCI fiber in Verizon's region, approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are office buildings while approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are Verizon central offices and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are carrier hotels. *See* Attachment 1. As the Commission has held, competing carriers are not impaired in their ability to deploy fiber to these latter locations, which are points of high traffic concentration.[13] Indeed, there is at least one other competing carrier that has obtained fiber-based collocation in more than 80 percent of the Verizon central offices in which MCI has deployed fiber and in all of the carrier hotels. *See* Attachment 1 & n.6 *supra*.[14]

With respect to the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** office buildings to which MCI has deployed fiber, our data show that in at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings (49 percent), there is at least one other competing carrier that has already deployed fiber within those buildings. Attachment 1 contains the number of competing carriers at each building location. This list not only shows that there already are other competing providers serving these specific buildings, but the fact that at least two competing carriers were able to deploy fiber to these locations (MCI and one other provider) also shows that others could as well if MCI's facilities are removed as a source of competitive supply at those locations.

In addition, the overwhelming majority of the remaining buildings are demonstrably suitable for competitive supply as well. First, of the **[BEGIN**

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[12] *See* UNE Fact Report 2004 at III-4 to III-6 & Tables 1-3 (and underlying sources cited therein); *see also* Carlton et al., Verizon/MCI Merger: Analysis of Special Access at 3 (Sept. 9, 2005) (Attachment 2) ("Carlton et al. Presentation").

[13] *See Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶¶ 136-141 (2005) ("*Triennial Review Remand Order*").

[14] *See also* Lew Reply Decl. ¶ 7 & Exh. 2.

CONFIDENTIAL] **[END CONFIDENTIAL]** remaining buildings, at least **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** are buildings that are within just a quarter mile of a competitive fiber ring operated by a carrier other than MCI, and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** are within a half mile of competitive fiber. *See* Attachment 1.[15] As we have previously demonstrated, other providers can and do deploy fiber to customer buildings under these circumstances according to their own statements.[16] For example, XO states that its "average . . . building entry is 500 feet long."[17] Alpheus estimates that in downtown Dallas "the lateral that a CLEC needs to deploy may be from 500 feet to 5,000 feet."[18]

This also is consistent with MCI's own experience deploying fiber laterals. In MCI's experience, the all-inclusive cost of deploying a typical fiber lateral of up to one-quarter mile in a major urban area (where fiber deployment is typically most expensive) is approximately $100,000 or less. *See* Declaration of Edwin Fleming ¶ 5 (Attachment 3). Since the beginning of 2003, approximately 13 percent of MCI's approved building adds in Verizon's region were for buildings up to one-tenth of a mile from MCI's existing local network; 40 percent were for buildings up to one-quarter mile from MCI's existing local network; and an additional 35 percent were for buildings between one-quarter mile and one-half mile from MCI's existing local network. *See id.* For construction of new facilities, MCI generally requires that the access revenues committed by the customer be sufficient to cover recurring costs and provide a simple payback of construction costs within the payback period specified in MCI's corporate guidelines, currently **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** months. *See id.* ¶ 6. In practical terms, this means that MCI has constructed fiber laterals that have cost between **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** with a minimum revenue commitment from such customers of as little as **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** per month over a two-year period. *See id.* A customer can meet a minimum revenue commitment in that range with as few as 1-2 DS3s of capacity. *See id.* Based on MCI's experience from the

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[15] Verizon and MCI have previously explained that the distance between MCI's lit buildings and other CLEC fiber networks was determined using mapping software, which we first used to a circle around each of MCI's lit buildings using the building itself as the center of the circle. We then calculated the distance of the radius between the building and the network of the CLEC nearest to that building. *See* Special Access White Paper at 37.

[16] *See* Special Access White Paper at 35.

[17] Tirado (XO) Triennial Review Remand Decl. ¶ 17.

[18] Joint Declaration of Eleuterio (Teo) Galvan Jr. and Francisco Maella ¶ 90, *attached to* Comments of Alpheus Communications, L.P., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC filed Oct. 4, 2004).

beginning of 2003 through mid-2005, deploying laterals takes approximately five months on average, but can take as little as six-to-eight weeks. *See id.* ¶ 7.[19]

The fact that MCI's lit buildings lie within close proximity to other CLEC networks is depicted graphically by the Google Earth maps being filed under separate cover. These maps were generated using satellite images produced by Google Earth together with the information currently available to the applicants with respect to buildings where a subset of competing providers have fiber. *See* Vanzelfte Decl. ¶¶ 13 – 16 (Attachment 4). These maps show that, even in instances where the limited data available to the applicants does not identify another fiber provider in a particular building, there typically is in fact competitive fiber running right past that building, and often connecting to buildings right next door or across the street. The map of Reston, VA is illustrative. According to our data, there are **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings with a Reston address where MCI is the only carrier we have been able to identify with fiber. But as the map demonstrates, other providers have deployed fiber in parallel to MCI on virtually every street where these buildings are located.

Second, the majority of the remaining buildings also are in areas that meet the Commission's own criteria for evaluating where it is economic to deploy fiber. We previously demonstrated that 80 percent of MCI's *total* buildings with fiber are in locations that meet the "triggers" the Commission established for determining where competing providers are capable of deploying their own fiber.[20] With respect to the subset of buildings where the limited information available to the applicants has not identified another competitive supplier, at least 43 percent (or **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**) are in locations where the Commission has concluded other providers can deploy fiber. *See* Attachment 1. In particular, these buildings are in wire centers that meet the DS3 loop trigger because they have at least 38,000 business lines and four or more fiber-based collocators.[21]

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[19] Based on this evidence, the standard for entry set forth in the Merger Guidelines – which deem potential entry by committed entrants sufficient "to deter or counteract the competitive effects of concern" where such entry "can be achieved within two years from initial planning to significant market impact – is satisfied. Horizontal Merger Guidelines §§ 3.0, 3.2.

[20] *See* Powell et al. Reply Decl. ¶ 31; *Triennial Review Remand Order* ¶¶ 174-177.

[21] Some parties have argued that MCI's fiber-based collocations should not be counted in such an analysis. Those claims are misplaced because the fact that MCI was able to deploy fiber to those locations indicates that other competitive providers can as well. In any event, the analysis here excludes MCI's fiber-based collocations from the analysis which does not materially alter the results. *See* Carlton et al. Presentation at 4 (performing analysis with MCI's fiber-based collocation included).

Third, based solely on the demand that MCI and other competitors that resell Verizon special access are providing, at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the remaining **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings generate demand for at least two or more DS3s, which the Commission held is sufficient demand to justify construction of new fiber. *See* Attachment 1.[22] This figure will actually understate the amount of demand in these building in many (or all) cases because it does not include the capacity that other competitors may be supplying using their own facilities or that Verizon may be providing on a retail basis. Moreover, in a number of cases the customers in the buildings are very large enterprises or government customers who, because they control huge volumes of business, are uniquely able to attract entry from multiple suppliers. For example, MCI serves government customers in approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the buildings to which it has deployed fiber in Verizon's region.

Taken together, all this means that at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (or 90 percent) of the MCI buildings without an identifiable additional fiber provider already in the building are within a quarter mile of a competitive network or meet one of the Commission's criteria for competitive supply. At least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the remaining buildings (or 92 percent) are within a half mile of a competitive network or meet one of those other criteria.

2. The analysis yields similar or even stronger results for the three Verizon MSAs on which Professor Wilkie's latest presentation focuses (at 10) – New York, Philadelphia, and Los Angeles. As the spreadsheet in Attachment 1 indicates, the vast majority of buildings with MCI fiber in those MSAs likewise are already served by other fiber providers or are demonstrably suitable for competitive supply. *See also* Carlton et al. Presentation at 5.

In the New York MSA, there are **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** MCI buildings with fiber, of which **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are Verizon central offices and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are carrier hotels. Of the remaining **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings, at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (66 percent) have at least one or more known other providers with fiber already in the same building. Of the approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings

[22] *See also Triennial Review Remand Order* ¶ 177 ("[W]e find that it is generally feasible for a carrier to self-deploy its own high-capacity loops when demand nears two DS3s of capacity to a particular location.").

where the limited information available to us does not identify another provider, at least **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** (71 percent) are within a quarter mile of another competitor's fiber ring and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** are within a half mile. At least **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** buildings are in locations that the Commission previously concluded are capable of being served by competing fiber (*i.e.*, they are in wire centers with at least four fiber-based collocators and at least 38,000 business lines) and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** buildings generate known demand of at least two or more DS3s, which the Commission held is sufficient to demand to justify construction of new fiber. Taken together, at least 91 percent of the MCI buildings in the New York MSA without an identifiable additional fiber provider already in the building are within a quarter mile of a competitive network or meet one of the Commission's criteria for competitive supply. At least 94 percent of the remaining buildings are within a half mile of a competitive network or meet one of those other criteria.

In the Philadelphia MSA, there are **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** MCI buildings with fiber, of which **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** are Verizon central offices and one is a carrier hotel. Of the remaining **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** buildings, at least **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** (58 percent) have at least one or more known other providers with fiber already in the same building. Of the approximately **[BEGIN CONFIDENTIAL]** **[BEGIN CONFIDENTIAL]** buildings where the limited information available to us does not identify another provider, at least **[BEGIN CONFIDENTIAL]** **[BEGIN CONFIDENTIAL]** (91 percent) are within a quarter mile of another competitor's fiber ring and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** are within a half mile. At least **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** buildings are in locations that the Commission previously concluded are capable of being served by competing fiber (*i.e.*, they are in wire centers with at least four fiber-based collocators and at least 38,000 business lines) and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** buildings generate known demand of at least two or more DS3s, which the Commission held is sufficient to demand to justify construction of new fiber. Taken together, at least 93 percent of the MCI buildings in the Philadelphia MSA without an identifiable additional fiber provider already in the building are within a quarter mile of a competitive network or meet one of the Commission's criteria for competitive supply. At least 95 percent of the remaining buildings are within a half mile of a competitive network or meet one of those other criteria.

In the Los Angeles MSA, there are **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** MCI buildings with fiber, of which **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] are Verizon central offices. Of the remaining **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings, at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** (46 percent) have at least one or more known other providers with fiber already in the same building. Of the approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** buildings where the limited information available to us does not identify another provider, at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are within a quarter mile of another competitor's fiber ring, and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are within a half mile. In addition, **[BEGIN CONFIDENTIAL] [BEGIN CONFIDENTIAL]** remaining buildings generate known demand of at least two or more DS3s, which the Commission held is sufficient to demand to justify construction of new fiber. Taken together, at least 93 percent of the MCI buildings in the Los Angeles MSA without an identifiable additional fiber provider already in the building are within a quarter mile of a competitive network or have at least two DS3s worth of demand at the location. All of the remaining buildings are within a half mile of a competitive network or meet that other criteria.

3. Professor Wilkie's latest presentation, like his previous submissions, argues that AT&T's and MCI's local fiber facilities *combined* are more extensive than the fiber deployed by other providers, and that this somehow makes MCI a uniquely important competitor. But that claim is untenable for several reasons.

a. As an initial matter, the only relevant question here is the extent to which MCI alone – not MCI and AT&T combined – competes with Verizon. The reason Professor Wilkie eschews this analysis is that it is devastating to his claim.

Even based on the limited data that Verizon and MCI have been able to obtain regarding competitive fiber, it is clear that competing carriers have collectively deployed considerably more fiber than MCI alone.[23] Excluding MCI, competing carriers in Verizon's region have deployed known local facilities in at least 72 Verizon MSAs (compared to MCI's 30), and have obtained fiber-based collocation in at least 416 central offices (compared to MCI's **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**).[24] These other competing suppliers have deployed known fiber in

[23] Professor Wilkie cites the UNE Fact Report 2004 to support his claim (at 7) that "AT&T and MCI combined have about 50% of local CLEC fiber route miles nationwide," but the Fact Report provides local route mile data for only six CLECs other than MCI and AT&T, because these are the only carriers for which such data were available. See 2004 Fact Report at III-4, Table 1. As both the Fact Report and our previous filings in this proceeding have explained, however, there are many more CLECs that have deployed local fiber. *See* Lew/Lataille Decl. ¶ 22; Powell/Owens Decl. ¶ 18; Special Access White Paper at 28-34.

[24] *See* Special Access White Paper at 23.

415 of the 532 wire centers that account for 80 percent of Verizon's high-capacity special access demand (compared to MCI's **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**), and have obtained fiber-based collocation in 299 of those wire centers (compared to MCI's **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**).[25] Even within the 30 MSAs in which MCI has deployed fiber, the networks of other competing carriers are more extensive. *See* Figure.[26] And, as described above and in our prior submissions, other providers have deployed fiber in the very same locations as MCI.[27]

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[25] *See id.*

[26] *See id.*

[27] Although Professor Wilkie implies (at 16) that MCI's "substantial financial resources" set it apart from other CLECs, given MCI's recent bankruptcy this claim makes no sense. In any event, other CLECs have demonstrated their ability to invest significantly in local fiber. In 2002 and 2003 alone, CLECs invested over $10 billion in local infrastructure. *2005 CLEC Report*, Ch. 2 at Chart 1. *See also 2004 ALTS Report* at 10 (citing New Paradigm Resources Group).

b. Professor Wilkie nonetheless argues that AT&T should not be counted as a competitive fiber provider based on his speculation that SBC/AT&T and Verizon/MCI will collude to refrain from competing with each other following their respective mergers. But that argument is flawed for several reasons.

First, it would be economically irrational for Verizon to acquire MCI as a means of competing in the enterprise market nationwide and then to withdraw from competition in large parts of the country, including areas where enterprise customers have multiple locations.[28] It is all the more irrational because any supposed collusion with SBC would result in both companies losing business to competitors willing and able to provide service in both Verizon's and SBC's regions.[29] And as a purely legal matter, this type of unfounded speculation about supposed collusion simply cannot be credited, and that is especially true under the circumstances here.[30]

Second, the evidence shows that Verizon and SBC have competed, and continue to compete, extensively with one another. For example, Verizon competes for enterprise customers in 28 out-of-franchise areas, 17 of which are in SBC's service area.[31] SBC has obtained collocation arrangements in **[BEGIN CLEC PROPRIETARY] [END CLEC PROPRIETARY]** Verizon MSAs.[32] SBC has recently won a number of major enterprise contracts such as the Red Cross, VHA, Maritz, Bob Evans Farms, all of which involve the provision of service in parts of Verizon's region.[33] Verizon and SBC also compete directly in the provision of wireless services nationwide, and for a number of other services including VoIP.[34]

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[28] *See* Verizon/MCI Reply Comments at 22-23; Carlton et al. Reply Decl. ¶¶ 58-62, 65.

[29] *See* Carlton et al. Reply Decl. ¶ 62.

[30] *Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126, 1130 (D.C. Cir. 2001) (in the absence of evidence that "collusion has in fact occurred or is likely to occur," assumption that parties could collude was impermissible "mere conjecture").

[31] Bruno et al. Reply Decl. ¶ 15.

[32] *Verizon/MCI 6/30/05 Ex Parte* at 6.

[33] *See* Special Access White Paper at 32.

[34] *See* Verizon/MCI Reply Comments at 24. In any event, even if AT&T's local fiber were removed from the analysis, there would still be extensive competition. For example, if AT&T is excluded from the analysis of the 39 cluster areas, there would still be two or more carriers other than MCI in 90 percent of these areas, as opposed to 92 percent with AT&T included. At the wire center level, even if AT&T is excluded there would still be at least one additional competitor in 88 percent of the wire centers where MCI operates fiber (and in 96 percent of the wire centers where MCI has established fiber-based collocation), as opposed to 89 percent and 96 percent when AT&T is included. *See* Special Access White Paper at 33 & n. 65.

It is noteworthy that in his most recent submission, Professor Wilkie has omitted the sole prior example he used of a market where SBC and Verizon supposedly did not compete – namely, Los Angeles. And for good reason. In response to his prior presentations, Verizon proved this to be false demonstrating, among other things, that each company has deployed extensive fiber facilities in each other's territories within Los Angeles.[35] Verizon has deployed 300 miles of optical network facilities in SBC's territory in Los Angeles to compete directly with SBC, while **[BEGIN CLEC PROPRIETARY]**

[END CLEC PROPRIETARY].[36] Moreover, the Attorney General of the State of California has rejected claims of mutual forbearance, noting that such a strategy "would entail enormous opportunity costs . . . would offer little chance of success" and ignores the history of SBC and Verizon "competing out-of-region" against each other.[37]

In his most recent presentation, Professor Wilkie abandons his Los Angeles example and instead provides (at 14-15) a new example –Stamford, Connecticut. But the simple fact is that this area does not have the kind of concentrated business demand that typically has attracted entry. Data that SBC submitted to the FCC, for example, shows that virtually none of Connecticut is among the areas in which demand for SBC's high-capacity special access services is concentrated.[38] In addition, as we have shown, SBC competes extensively in nearby New York, among other regions in Verizon's territory. SBC has obtained fiber-based collocation in **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** Verizon central offices in New York and purchases nearly **[BEGIN CLEC PROPRIETARY]** **[END CLEC PROPRIETARY]** high-capacity special access channel terminations from Verizon in New York.

4. Professor Wilkie claims (at 9, 11-12) that the building-based HHI calculations used in his analysis are consistent with the findings of the NY PSC staff and

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[35] *Verizon/MCI 6/30/05 Ex Parte* at 6; Bruno et al. Reply Decl. ¶ 15.

[36] *Verizon/MCI 6/30/05 Ex Parte* at 5.

[37] Opinion of the Attorney General on Competitive Effects of Proposed Merger of SBC Communications and AT&T Corp. at 30, *Joint Application of SBC Communications Inc. and AT&T Corp. for Authorization of AT&T to Transfer Control of AT&T Communications of California et al.*, Application No. 05-02-027 (CA PUC filed July 22, 2005).

[38] *See* SBC Comments at 67 & Attach. C.

that "the DOJ has relied on HHI calculations for mergers in industries far more dynamic than telecommunications."[39] Professor Wilkie is misguided on both fronts.

First, Professor Wilkie's heavy reliance on HHIs is misplaced. As the leading antitrust treatise explains, "the HHI should always be used tentatively," because "although the HHI appears to give definitive answers to how markets respond to increasing variations in the number and size disparities among firms, such responses are in fact far more complex and depend on" a variety of other factors.[40] The HHI does not capture all aspects of market structure, and market structure is only one of many factors that affect the likelihood of anticompetitive behavior. Thus, the treatise says, "use of purely structural information to justify government intervention such as . . . the prohibition of mergers might do considerably more harm than good by preventing firms from developing to their most efficient size."[41]

Not surprisingly, the Department of Justice's ("DOJ") and Federal Trade Commission's ("FTC") Horizontal Merger Guidelines ("Guidelines"), suggests only a limited role for HHI calculations, as merely "an aid to the interpretation of market data."[42] More importantly, since the Guidelines were issued, HHIs "have, if anything, become *progressively less significant*," as FTC Commissioner Thomas Leary explained in 2002.[43] In a similar vein, Lawrence Fullerton, then-Deputy Assistant Attorney General for Antitrust at DOJ, said in 1996 that DOJ does "not approach merger analysis mechanistically" and that, after defining markets and assessing market concentration, DOJ then determines "whether anticompetitive effects are likely, given the[] concentration levels and other characteristics of the market."[44]

Even aside from the fact that Professor Wilkie places far too much weight on HHI calculations, there is little reason to believe that those calculations provide any probative information on this transaction. That is because HHIs reflect the *past* while the question concerning whether a transaction will injure competition is necessarily predictive and

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[39] The NY PSC staff's White Paper, moreover, is not a decision of the New York commission, but simply the "preliminary" and "tentative" conclusions of its staff. NY PSC Staff White Paper at 4. Verizon and MCI filed extensive comments on April 8, 2005 demonstrating the numerous errors in the White Paper.

[40] P. Areeda *et al.*, IV *Antitrust Law* ¶ 930b at 136-37 (1998).

[41] *Id.* ¶ 930c at 138.

[42] Horizontal Merger Guidelines § 1.5.

[43] Thomas B. Leary, *The Essential Stability of Merger Policy in the United States* (Jan. 17, 2002) (emphasis added).

[44] Lawrence R. Fullerton, *Recent Developments in Merger Enforcement* (Mar. 13, 1996).

forward-looking.[45] Indeed, the DOJ/FTC Guidelines state that the shares used to calculate HHIs should themselves "be calculated using the best indicator of firms' *future* competitive significance."[46] Where, as here, markets are characterized by rapid technological or other changes, or individual firms are either declining or rising rapidly, sound merger analysis requires either that past data not be used for calculations of market structure or that calculations based on such data be used for only limited and tentative purposes.

The use of HHIs is particularly inappropriate in the context of Professor Wilkie's analysis, which focuses on special access services that are often sold in a bid market. As the leading antitrust treatise explains, the use of static market share analysis in this context is misguided because "the firm that won the one contract awarded in a particular year has 100 percent of that year's sales – a most meaningless number when other firms bid and win in other years."[47] This is borne out by the database of contracts that Verizon and MCI have previously submitted, which surveys over 1,200 contracts won by 57 different competing carriers since the beginning of 2003 alone. Although the value of these contracts were available only about a quarter of the time, the total value of such contracts is more than $66 billion.[48] The backward-looking HHI analysis performed by Professor Wilkie does not take this recent competitive activity into account.

In short, there is no basis in economic theory, antitrust law, or the enforcement policies of the expert federal antitrust enforcement agencies for treating HHI calculations as more than one of many relevant market facts in assessing the competitive significance of a merger, particularly one in an industry such as this one, which is undergoing dynamic change. Professor Wilkie's analysis is fundamentally flawed because it gives dispositive weight to such calculations.

Professor Wilkie's HHI calculations also rely on flawed methodology and data. Professor Wilkie attempts (at 10) to calculate HHIs "on a capacity basis" for three MSAs -- New York, Philadelphia, and Los Angeles. As demonstrated above, however, the vast majority of buildings with MCI fiber in those MSAs are already served by other fiber providers or are demonstrably suitable for competitive supply due to the fact that they lie in close proximity to a competitive fiber ring, are in areas where the Commission has concluded other providers can deploy fiber, or generate sufficient demand to justify

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[45] Horizontal Merger Guidelines § 0 ("[T]he picture of competitive conditions that develops from historical evidence may provide an incomplete answer to the forward-looking inquiry of the Guidelines.").

[46] *Id.* § 1.41 (emphasis added).

[47] P. Areeda et al., IIA *Antitrust Law* ¶ 535d at 225.

[48] *See* Special Access White Paper at 87.

construction of laterals from those rings. Professor Wilkie attempts to get around this by analyzing not only buildings that MCI serves with fiber, but also locations that MCI serves using special access purchased from Verizon. But as described in Part B below, this analysis is not meaningful because MCI has no unique ability to resell Verizon special access. In any event, Professor Wilkie's analysis must be disregarded for several additional reasons. First, he fails to indicate whether the "change in HHI post-merger" he purports to identify is the result of combining just Verizon and MCI, or also reflects the combination of AT&T, which is the approach he took elsewhere in his presentation and in his previous submissions. Second, he fails to explain whether he is calculating MCI's share of CLEC-served buildings, or all buildings. In Professor Wilkie's May 9, 2005 declaration he did only the former. Third, Professor Wilkie's analysis is absurd on its face. In the part of the Los Angeles MSA served by Verizon, for example, he asserts that AT&T's and MCI's combined market share among CLECs is 96 percent (and 100 percent for buildings with T3 or higher demand). But as demonstrated above, MCI serves only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** office buildings with fiber in this area and at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of those have one or more competitive fiber provider already in the building.

Finally, to the extent Professor Wilkie points to the HHI calculations of the NY PSC Staff for support, that too is unavailing. The NY PSC staff's calculation of HHIs and its overlap analysis is fundamentally flawed in numerous material respects. The PSC staff relied on an outdated and incomplete set of data to determine the extent of fiber deployment in New York: the self-reported data obtained in late 2003 and early 2004 in response to the *Triennial Review Order*. As an initial matter, many carriers with fiber networks in New York – such as Looking Glass, Global Crossing, and NEON, among others – were not parties to that proceeding and did not respond to the Staff's requests for data. Indeed, only 17 carriers submitted data in response to Staff's request.[49] MCI's and Verizon's data, which are based on information that CLECs themselves provide in other contexts where they have incentives to be more candid, indicate the existence of more than 20 fiber providers *in addition* to those that submitted data to Staff.[50] Moreover, as even the PSC Staff recognized, the data that were submitted "contained numerous inconsistencies," and some companies did not submit data but instead "indicated that they do not maintain data in such a way as to be able to answer [Staff's] questions" or

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[49] *See* Case 03-C-0821, "Descriptive Summary of Department of Public Service Staff's Preliminary Data Collection Effort" (Nov. 17, 2003), at 4 ("Descriptive Summary").

[50] *See* Declaration of Carlton, Bamberger and Shampine ¶ 58, *attached* as Exhibit 1 to the Comments of Verizon, New York Public Service Commission, Case 05-C-0237 (Aug. 5, 2005), *attached to* Ex Parte Letter from Dee May, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-75 (FCC filed Aug. 12, 2005) ("Carlton et al. New York Declaration").

"*claimed that answering [Staff's] questions . . . would be cost prohibitive.*"[51] Because Staff's analysis is entirely based on this fundamentally flawed data set, no meaningful conclusions can be drawn from the calculations it conducted.[52] And this is all the more true because the Staff's analysis provides no information on where competitors would be able to provide competitive fiber if MCI's fiber network were removed as a source of competitive supply.

B. MCI Has No Unique Capabilities as a Wholesale Supplier of High-Capacity Special Access Services

Professor Wilkie's second basic argument is that MCI is somehow uniquely positioned to act as a wholesale supplier by purchasing and reselling special access from Verizon. The facts of the matter, however, are that MCI's resale of special access purchased from Verizon or other incumbents is narrowly limited, and that MCI also has no unique ability to resell special access purchased from Verizon because the discounts available to MCI also are available to others.

1. As an initial matter, the notion that MCI is somehow uniquely able to purchase and resell special access services from Verizon is simply false. This is so for several reasons.

As we have previously shown, MCI resells ILEC special access only in limited circumstances. The vast majority of MCI's wholesale sales are on circuits that are provided entirely over MCI's own facilities. Specifically, more than three quarters of MCI's wholesale Metro Private Line revenue is derived from circuits that are entirely on-net and do not use incumbent LEC special access at all, *i.e.*, Type I circuits.[53] The

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[51] Descriptive Summary at 4.

[52] Professor Wilkie's rote repetition of the Staff's claims introduces still further error by conflating MCI's and AT&T's transport facilities. He repeats without analyzing (at 12) their claims that of the 487 transport routes that Staff analyzed, 337 are "routes on which a combination of VZ, MCI, AT&T and SBC are the only transport competitors," while 72 are "routes where VZ, MCI, and AT&T are the only three transport providers." But the reality is that MCI is the only carrier with fiber-based collocation on both ends of only 8 routes, or just over 1.5 percent of the routes, and that 82 percent of the 487 routes have at least one fiber-based collocator on each end of the route other than MCI and more than 55 percent of those routes have at least three fiber-based collocators on each end other than MCI. *See* Carlton et al. New York Declaration ¶ 66. Even if the analysis were limited to routes where the same carrier has fiber-based collocation on both ends of the route and therefore can use its own network to transport traffic between the two wire centers more than 75 percent of routes have at least one fiber-based collocator on both ends of the route (excluding MCI) and more than 40 percent of those routes have at least three such collocators on both ends (excluding MCI). *See id.*

[53] Powell et al. Reply Decl. ¶ 11.

remaining minority of wholesale sales typically involve circuits that can be provided at least in part over MCI's facilities, with one end or the other using resold ILEC special access to complete the circuit.[54] MCI typically does not provide entire circuits using resold ILEC special access.[55]

Accordingly, MCI accounts for an extremely limited portion of wholesale special access services in Verizon's region.[56] MCI earns only about **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** from the provision of wholesale special access (which it calls Metro Private Line Service) in the Verizon East region, of which roughly 80 percent (or **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**) was provided entirely using MCI's facilities (i.e., through Type I circuits), with most of the remainder provided using Type II circuits where MCI uses ILEC special access to extend MCI's network to an off-net building.[57] MCI's Metro Private Line revenues therefore account for no more than *2 percent* of carrier customers' total demand for special access in Verizon's region.[58] With respect to the DS1 circuits that the CLECs have expressed concern about in the past, MCI is an even less significant factor because MCI earns the majority of its wholesale Metro Private Line revenues from DS3 or higher services.[59]

This also is corroborated by the data the Commission compiles in its Telecommunications Industry Revenue reports based on carriers' Form 499-A filings. According to the Commission's most recent data regarding special access revenues provided on a wholesale basis, RBOCs account for $10.2 billion in revenues; independent LECs account for $1.4 billion; CLECs account for $954 million; IXCs account for $192 million; and others account for $22 million. MCI's current nationwide wholesale Metro Private Line revenues are only about **[BEGIN CONFIDENTIAL] [END**

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[54] *Id.* ¶ 12.

[55] *Id.*

[56] Professor Wilkie claims (at 5) that Verizon's prior regulatory filings and MCI's provision of lit-building lists to other CLECs contradict the claim that MCI does not actively participate in the local wholesale market. He asserts that MCI is a "major wholesale provider of local circuits." Wilkie at 3-5. This is a straw man: the issue is not whether MCI provides special access on a wholesale basis, but whether there is anything unique about MCI as a competitive supplier to wholesale customers. The evidence that Professor Wilkie cites is relevant only to the first point, which is not in dispute.

[57] *See* Special Access White Paper at 59.

[58] *See id.* at 16, 17.

[59] *See id.* at 17.

CONFIDENTIAL], which represents only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** percent of the total.[60]

This reflects the fact that, as Verizon and MCI also demonstrated previously, MCI is just one of many carriers capable of providing special access services to carrier customers. As an initial matter and as described above, there are many competing carriers that operate fiber networks in the same areas as MCI. All of these competing networks can be used to supply service to carrier customers and, therefore, are a source of competitive discipline regardless of how carriers are in fact using those networks today. In any event, we have submitted data demonstrating that, according to carrier's own websites, a large number of the carriers that own fiber networks are in fact offering wholesale special access services over those networks.[61] For example, Time Warner Telecom, XO, Level 3, Cablevision Lightpath, and AboveNet, to name just a few all report offering services on a wholesale basis.[62]

2. MCI also has no unique ability to resell special access purchased from Verizon because the discounts available to MCI also are available to other competitors. Professor Wilkie's and the CLECs' claims to the contrary betray a fundamental misunderstanding of Verizon's tariffs.

As we have explained, the overwhelming majority of Verizon's discount plans are based on the contract term rather than amount the customer purchases, so that the same significant discounts are available regardless of how much a customer spends with Verizon.[63] While some Verizon plans offer the customer greater flexibility in managing their services in exchange for the customer's commitment to maintain a minimum percentage of its existing special access services with Verizon, the plans do not offer customers greater discounts for greater revenue volumes. Even under the plans based on pre-existing expenditures, the discounts increase only with the term commitment, and even those plans provide no greater discount than is available under plans that do not contain such a requirement.[64]

The limited plans that do offer discounts based on revenue volumes are of limited significance. First, Verizon offers some discounts based on revenue volumes in the Verizon West territory. But the Verizon West territory accounts for only approximately

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[60] *See id.* at 59.

[61] *See* Lew Reply Decl. ¶ 8-14 & Exh. 1A.

[62] *See id.* ¶ 14.

[63] *See* Reply Comments at 39; Lew Reply Decl. ¶¶ 28-57; Lew Special Access Decl. ¶¶ 90-94.

[64] *Id.*

[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of Verizon's special total access revenues, and the plans based on revenue volumes represent only about **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of that total. In the Verizon East territory, the only plans based on Verizon revenues that Verizon offers are the Total Billed Revenue ("TBR") plans that Verizon has recently introduced using its pricing flexibility authority. Under these plans, Verizon provides carriers a discount either quarterly or at the end of the year if the carrier's total purchases of certain special access services exceed certain revenue thresholds. With the exception of one TBR plan that is designed for smaller carriers and that is purchased by only one such carrier **[BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL]**, Verizon has implemented TBR plans that focus on only a subset of special access services – its Facilities Management Service ("FMS"). MCI is one of **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** carriers (together with **[BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL]**) that currently purchase under a TBR plan for FMS.[65] In the case of MCI, FMS represents only about 35-40 percent of its total special access purchases from Verizon, and (with one limited exception) MCI's other special access purchases do not count toward qualifying for the TBR discount.[66]

In any event, the same discounts are available to any other provider that wanted to purchase special access for resale to other carriers. In fact, there is no need even to operate as a carrier to enter this business – at least two companies, Global Internetworking and Last Mile Connections, have recently entered the business as wholesalers.[67] These companies aggregate demand and purchase services from numerous carriers, including incumbents, and then pass the discounts on to carrier customers. The ability to do so is significant because, as we have demonstrated previously, other providers in the aggregate purchase far more special access from Verizon than MCI does on its own.[68]

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[65] FMS is a service where Verizon designs and manages special access circuits on behalf of the purchaser. The fact that MCI is outsourcing this task to Verizon undermines any notion that MCI has a unique ability to perform this function for other providers.

[66] The one exception is for new SONET purchases, which count toward the total spent under this plan. To date, MCI's expenditures on SONET constitute a very small fraction of its FMS expenditures. The TBR plan under which MCI purchases is structured differently from the one under which **[BEGIN CLEC CONFIDENTIAL] [END CLEC CONFIDENTIAL]** purchase. That plan calculates a discount based on both FMS-specific and total special access revenues.

[67] *See* Lew Reply Decl. ¶ 61.

[68] *See* Special Access White Paper at 6, 58; Verizon Response to FCC Specifications, Exhibit 5.B.1.

The fact that MCI has some limited facilities of its own also does not give it any unique advantage in terms of its ability to resell special access. As demonstrated above and in our previous submissions, numerous competing carriers likewise have some facilities of their own and are collocated in the same wire centers as MCI, which puts them in the same position as MCI to offer wholesale special access in combination with their own facilities. MCI provides resold special access on a wholesale basis almost exclusively through arrangements where ILEC special access is used only for the last-mile connection to the customer. MCI will then connect those leased circuits to its own fiber network at its collocation arrangement in the ILEC's central office. The fact that other competing carriers are collocated at the same location means that they can do the same thing, without facing any of the up-front expenses that may be involved with obtaining collocation in the first instance. As noted above, of the approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** wire centers in Verizon's region in which MCI has obtained fiber-based collocation, one or more competing carriers with fiber-based collocation are in more than 80 percent of those wire centers.[69]

Further, the fact that other carriers already are competing more extensively than MCI using special access purchased from Verizon also belies the claim that MCI has some unique advantage. Verizon reviewed its wholesale special access billing records in two MSAs that Professor Wilkie previously cited – Albany and Baltimore – to determine the total number of individual building addresses at which Verizon provides special access to competing carriers.[70] Within these MSAs, Verizon analyzed data only for the limited subset of wire centers in which MCI has deployed fiber, which represent only a small fraction of the total wire centers in these MSAs.[71] In both cases, the data show that competing carriers collectively serve substantially more locations than MCI itself using Verizon special access. With respect to the areas analyzed in the Baltimore MSA, other carriers serve more than double the number of locations MCI serves, **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[72] In the Albany MSA, other carriers excluding MCI serve almost

[69] Lew Reply Decl. ¶ 7; *see also* Attachment 1.

[70] These represent two of the six MSAs in which Professor Wilkie claimed that MCI and AT&T served more locations than other competitive providers. These MSAs were selected from the group because the process of analyzing wholesale billing records is very labor-intensive, and these two MSAs are smaller and, therefore, have a smaller dataset than the other four MSAs.

[71] Verizon limited its analysis to this subset of wire centers because Verizon had previously extracted detailed billing records for those wire centers in which MCI has deployed fiber to buildings, and it is very labor intensive to pull this type of data. The subset of wire centers that Verizon analyzed represent fewer than 10 percent of the wire centers in the Albany metropolitan area, and approximately 30 percent of the wire centers in the Baltimore metropolitan area.

[72] *See* Special Access White Paper at 61.

three times as many locations as MCI serves, a total of **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[73]

3. Finally, Professor Wilkie claims (at 5) that "data from bids to provide circuits to CLECs demonstrate that AT&T and MCI are very active participants." Professor Wilkie claims that he performed a "regression analyses" of this bid data, which purports to show that prices would be higher if MCI were removed as a supplier. But these claims must be rejected for multiple reasons.

As an initial matter, Professor Wilkie has failed to provide any of the bid data on which he supposedly relies. Although Verizon and MCI requested this data, the CLECs sponsoring Professor Wilkie's analysis denied that request. *See* Attachment 5.[74] Accordingly, Professor Wilkie's analysis can be given no weight.[75]

In any event, the limited description that Professor Wilkie does provide makes clear that his analysis cannot be credited. Professor Wilkie claims (at 5) that "in two auctions last year for transport circuits in . . . VZ territories, using Type I and Type II circuits . . . MCI bid for 80% [of the total] in Verizon." This assertion is meaningless for at least three reasons.

First, there is no way to determine how many circuits were involved in the bids or the locations at which they were demanded. As a result, there is no way to gauge the significance of MCI's ability to supply the bids.

Second, there is no way to distinguish how many of the locations in the bid MCI was able to supply using its own local fiber network (*i.e*, using Type I circuits) as opposed to reselling other providers' facilities, including ILEC special access. As Verizon and MCI have explained, and as discussed above, MCI is not unique in its ability to resell special access and, therefore, this resale cannot be conflated with special access that MCI supplies using its own local fiber facilities.

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[73] *See id.*

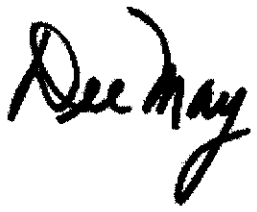
[74] This is all the more troublesome given that Professor Wilkie's characterization of his results are constantly shifting. While his most recent presentation states (at 5) that "the removal of . . . MCI from VZ territory would result in bid prices increasing by anywhere between 11% and 400% depending on the type of circuit," his prior presentation (on June 14, 2005) describes the same analyses as demonstrating that "post-mergers, the wholesale price discount from special access rates would decrease on average by over 15%." Wilkie June 14 Pres. at 22.

[75] *See, e.g., International Union, UAW v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) ("[W]hen a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.").

Third, Professor Wilkie now concedes that his analysis is based on a comparison to "ILEC Special Access 'Rack' Rates." Verizon and MCI's prior submissions suspected this was the case, and explained why such a comparison is worthless. In particular, very few customers actually pay the "rack" rates that Professor Wilkie uses, but instead purchase special access under volume and term discount plans that offer substantial discounts (as much as 40 percent) off of those rack rates.[76]

In sum, Professor Wilkie's claims in his most recent submission suffer from the same basic flaws as his previous presentations and must be rejected.

Sincerely,



Dee May
Verizon

Curtis Groves
MCI

Enclosures

cc: Michelle Carey
Tom Navin
Gail Cohen
William Dever
Ian Dillner
Marcus Maher
Don Stockdale
Julie Veach

[76] *See* Lew Reply Decl. ¶¶ 54-57; Verizon/MCI Reply Comments at 35-36, n.50.

REDACTED – FOR PUBLIC INSPECTION

ATTACHMENT 1

REDACTED – FOR PUBLIC INSPECTION

REDACTED – FOR PUBLIC INSPECTION